

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH.

RSA-1434-1992

Date of Decision: 18.8.2023

Smt. Dhanwanti Devi

....Appellant

VERSUS

Sardari Lal Jain and another

....Respondents

CORAM:- HON'BLE MR. JUSTICE KARAMJIT SINGH

Argued by : Mr. Saksham Mahajan, Advocate, for the appellant.

None for the respondents.

KARAMJIT SINGH, J.

The appellant/defendant has filed this appeal against the judgment/decreed dated 4.3.1992 passed by the Court of Additional District Judge, Ludhiana whereby the appeal filed by the appellant against the judgment/decreed dated 14.5.1990 passed by Sub Judge, First Class, Ludhiana, has been dismissed.

2. Brief facts of the case of the plaintiff-respondent No.1 are that the plaintiff-respondent No.1-Sardari Lal Jain was inducted as a tenant in the shop situated in Hindi Bazar, Ludhiana by Amar Nath its previous owner at monthly rent of ₹ 17/- in the year 1956. Said shop was purchased by appellant-Dhanwanti Devi from Amar Nath in 1965 and then the plaintiff started paying rent to her and the plaintiff regularly paid rent up to 31.3.1980. In the meantime, appellant-Dhanwanti Devi and respondent No.2-Parkash Chand conspired to get vacate the shop from the plaintiff. The appellant filed petition under Section 13 of the East Punjab Urban Rent Restriction Act (in short, "the Rent Act") against the plaintiff on the ground

of non-payment of rent and some other grounds on 15.4.1983. The rent

petition remained pending up to 16.1.1985 wherein the plaintiff also filed an application under Section 340 of Cr.P.C. The said petition was finally dismissed as withdrawn by the learned Rent Controller, Ludhiana vide order dated 16.1.1985. In the said rent petition, the plaintiff engaged counsel and paid fee to him and also incurred additional expenses of ₹ 10,00/- while appearing on each and every date of hearing. Thereafter, the appellant filed another rent petition against the plaintiff on 17.1.1985 without disclosing the fact regarding dismissal of previous rent petition. Even in the said rent petition, the plaintiff engaged counsel and also incurred additional expenses and the second rent petition was dismissed in default on 22.1.1985. Thereafter, another rent petition filed by the appellant was also dismissed wherein also, the plaintiff engaged counsel and incurred additional expenses. The appellant who earlier failed on 3 occasions filed another ejectment petition in the Court of learned Rent Controller, Ludhiana wherein also, the plaintiff engaged counsel and incurred additional expenses. In this manner, the plaintiff suffered mental and physical agony on account of his malicious prosecution by the appellant and respondent No.2-Parkash Chand. The plaintiff claimed damages worth ₹ 8850/- on account of malicious prosecution from appellant-Dhanwanti Devi and respondent No.2-Parkash Chand.

3. The suit was contested by the defendants who filed joint written statement wherein it was pleaded that the plaintiff was not a good tenant and defaulted in paying the rent and thus, compelling the appellant to file different ejectment petitions; that it cannot be said that the appellant filed ejectment petitions without any proper and just cause. It was also prayed that the suit be dismissed.

4. From the pleadings of the parties, following issues were framed by the learned trial Court : -

1. Whether the defendants prosecuted previous proceedings under the Rent Act against the plaintiff maliciously? OPP
2. Whether the suit is not maintainable? OPD
3. To what amount, the plaintiff is entitled to recover as damages? OPP

5. Counsel for the plaintiff examined PW1-Surinder Kumar attorney of the plaintiff who produced documents Ex.P1 to Ex.P25, which are relating to the different rent petitions filed by the appellant against plaintiff.

6. On the other hand, counsel for the defendants examined DW1-Parkash Chand and DW2-Dhanwanti Devi.

7. After hearing counsel for the parties, learned trial Court granted damages worth ₹1,000/- with proportionate costs to the plaintiff and against the appellant, along with future interest @ 6% per annum on the decretal amount from the date of decree till its realization.

8. Being aggrieved, the appellant preferred an appeal against the judgment and decree of the learned trial Court dated 14.5.1990. The Court of learned Additional District Judge, Ludhiana while affirming the findings of the learned trial Court, dismissed the appeal vide judgment dated 4.3.1992.

9. The appellant not being satisfied, has filed the present appeal.

10. I have heard counsel for the appellant.

11. Counsel for the appellant, while challenging the findings returned by the Courts below, *inter alia* contends that the appellant was owner of the shop which was taken on rent by respondent No.1-Sardari Lal Jain; that the tenant was unable to pay the rent of the shop regularly and as

and when, the tenant was in arrears of rent, the appellant used to file rent

petitions in order to recover said arrears of rent. It is further contended that as and when, respondent No.1 made payment of arrears of rent, the appellant used to withdraw the rent petitions and in this manner, multiple rent petitions were filed by the appellant to recover the arrears of rent.

12. Counsel for the appellant has further argued that respondent No.1 himself failed to appear in the witness box in order to prove that on account of filing of multiple ejectment petitions by the appellant, he suffered any financial loss or the said act on the part of the appellant caused loss to his reputation or that he suffered any mental agony due to filing of the rent petitions in question. Counsel for the appellant has further contended that there is nothing on record to show that the appellant while filing the rent petitions, had acted without reasonable and probable cause. It is further contended that filing of multiple rent petitions by the appellant could not be termed as a malicious prosecution of respondent No.1. So, it is contended that the judgments passed by the Courts below are not sustainable and deserve to be set aside.

13. I have considered the submissions made by the counsel for the appellant.

14. A judicial proceedings instituted by one person against another for wrongful or improper motive and without probable cause to sustain it is a malicious prosecution. To succeed in a suit for malicious prosecution, the plaintiff has to prove **(i)** that the prosecution was without any reasonable and probable cause **(ii)** it was instituted with a malicious intention; and **(iii)** that he suffered damage.

15. In the present case plaintiff/respondent No.1 himself failed to appear in the witness box in order to prove his case. PW-1 Surinder Kumar

real brother of the respondent No.1 appeared in the witness box being his

attorney. It is settled law that the power of attorney holder cannot depose in place of his principal regarding facts, which principal alone has personal knowledge as has been held by the Hon'ble Supreme Court in **Man Kaur vs. Hartar Singh Sangha (2010)10 SCC 512**. Further the Hon'ble Supreme Court in **S. Kesari Hanuman Goud vs. Anjum Jehan (2013)12 SCC 64** has held that *"It is a settled legal proposition that the power of attorney holder cannot depose in place of the principal. Provisions of Order III, Rules 1 and 2 CPC empower the holder of the power of attorney to "act" on behalf of the principal. The word "acts" employed therein is confined only to "acts" done by the power-of-attorney holder, in exercise of the power granted to him by virtue of the instrument. The term "acts", would not include deposing in place and instead of the principal. In other words, if the power-of-attorney holder has preferred any "acts" in pursuance of the power of attorney, he may depose for the principal in respect of such acts, but he cannot depose for the principal for acts done by the principal, and not by him. Similarly, he cannot depose for the principal in respect of a matter, as regards which, only the principal can have personal knowledge and in respect of which, the principal is entitled to be cross-examined"*.

16. In the instant case PW-1 Surinder Kumar while appearing in the witness box has nowhere stated that he was having any personal knowledge with regard to the facts of the present case and thus in the light of the settled law as has been discussed above, much weightage cannot be given to the testimony of PW-1 as he was not personally aware about the facts of the present case. Thus in the instant case the respondent No.1 has failed to prove that on account of filing of repeated rent petitions by the appellant, his

reputation was tarnished in the eyes of his relatives and general public or

that he suffered any financial loss.

17. From the perusal of the record, it is evident that first rent petition was filed by appellant on 15.4.1983 on the ground of non-payment of rent and the same was withdrawn on 16.1.1985. Thereafter 3 other rent petitions were filed by the appellant in the year 1985 and the same were also disposed of in the same very year. However, from the perusal of the documents which are placed on record by the respondent No.1, it cannot be made out that the said rent petitions were filed by the appellants without any reasonable and probable cause and even the Courts of rent controller concerned did not make any such observations while disposing of the aforesaid rent petitions. So it could be easily inferred that the said rent petitions were not instituted by the appellant with any malice or mala-fide intention.

18. For the forgoing reasons, the findings returned by the Courts are illegal and liable to be set aside.

19. Consequently the present appeal is allowed and judgment dated 14.5.1990 passed by Sub Judge, First Class, Ludhiana and judgment/decreedated 4.3.1992 passed by the Court of Additional District Judge, Ludhiana are set aside and the suit of respondent No.1 is dismissed.

(KARAMJIT SINGH)
JUDGE

August 18, 2023
Paritosh Kumar/Gaurav Sorot

Whether speaking/reasoned	Yes/No
Whether reportable	Yes/No